

**THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS**

CHARLES AND MARILYN  
UNDERWOOD, individually and on behalf  
of all others similarly situated,

Plaintiffs,

v.

IFDA SERVICES, INC., *et al.*,

Defendants.

No. 09-cv-390-GPM-DGW

Judge G. Patrick Murphy

CLANCY-GERNON FUNERAL HOMES,  
INC., *et al.*, on behalf of themselves and all  
others similarly situated,

Plaintiffs,

v.

MERRILL LYNCH, PIERCE, FENNER &  
SMITH, INC., *et al.*,

Defendants.

No. 3:09-cv-01008-GPM-DGW

Judge G. Patrick Murphy

PETTETT FUNERAL HOME, LTD., *et al.*,  
on behalf of themselves and all others  
similarly situated,

Plaintiffs,

v.

MERRILL LYNCH, PIERCE, FENNER &  
SMITH, INC., *et al.*,

Defendants.

No. 3:10-cv-01000-GPM-DGW

Judge G. Patrick Murphy

**CLASS PLAINTIFFS' MOTION FOR FINAL APPROVAL OF THE  
CLASS ACTION SETTLEMENT, FOR AN AWARD OF ATTORNEYS' FEES,  
AND FOR REIMBURSEMENT OF LITIGATION EXPENSES**

Plaintiffs, on behalf of themselves and members of the proposed Consumer and Provider and Trustee Classes,<sup>1</sup> through undersigned Plaintiffs' Counsel, respectfully move this Court for final approval of the Settlement, an award of attorneys' fees, and reimbursement of litigation expenses.

The following documents in support of this Motion are filed or otherwise submitted concurrently herewith:

- Plaintiffs' Memorandum in Support of their Motion;
- Declaration of Settlement Administrator Epiq Class Action & claims Solutions, Inc.;
- Declaration of Edward A. Wallace, Counsel for the Provider and Trustee Plaintiffs;
- Declaration of Steven J. Roeder, Counsel for the Provider and Trustee Plaintiffs;
- Declaration of Robert M. Foote, Consumer Counsel;
- Declaration of Counsel for Pettett Funeral Home, Ltd.;
- Declaration of Provider and Trustee Plaintiffs in Support of Reimbursement of Litigation Expenses; and
- Proposed Order Entering Final Judgment as to Class Claims, Granting Final Approval to Class Action Settlement, Awarding Attorneys' Fees, Reimbursement of Litigation Expenses, and Incentive Awards to Consumer Class Representatives.

In support of their Motion, Plaintiffs state as follows:

1. If approved, the proposed Settlement will resolve litigation brought on behalf of pre-need consumers, providers of pre-need funeral services, and trustees of pre-need accounts seeking recovery for damages sustained as a result of shortfalls in the IFDA Pre-Need Trust (the "Pre-Need Trust" or the "Trust").

2. Plaintiffs have alleged, *inter alia*, that the Defendants breached their fiduciary duties and engaged in other improper conduct in violation of the Illinois Consumer Fraud Act,

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<sup>1</sup> As defined in the Settlement Agreement.

815 ILCS 505/1, *et seq.*, and the Illinois Funeral or Burial Funds Act, 225 ILCS 45/1, *et seq.* (the “Burial Funds Act”) relating to the management, investment and administration of the Pre-Need Trust. Defendants have at all times denied Plaintiffs’ allegations.

3. The Settlement is fair, reasonable and adequate and was reached after years of aggressive litigation and lengthy sessions of intensive, arm’s-length negotiations between counsel.

4. For the reasons set forth in Plaintiffs’ Memorandum in Support of their Motion, final approval of the Settlement is appropriate and is in the best interests of members of the Classes.

WHEREFORE, Plaintiffs move the Court, for good cause shown, to enter the attached Proposed Order Entering Final Judgment as to Class Claims, Granting Final Approval to Class Action Settlement, Awarding Attorneys’ Fees, Reimbursement of Litigation Expenses, and Incentive Awards to Consumer Class Representatives, which:

- (1) finds the prerequisites of Fed. R. Civ. P. 23(a) and (b)(3) have been satisfied and certifies the proposed Classes for settlement purposes;
- (2) finds that Notice has been given to the Classes in the manner approved by the Court in its Preliminary Approval Order of February 17, 2012 [ECF No. 372] and that such Notice meets the requirements of due process and Fed. R. Civ. P. 23;
- (3) finds the Settlement to be fair, reasonable, and adequate, and in the best interests of the Classes;
- (4) dismisses all claims for relief in the Consolidated Class Actions with prejudice;
- (5) awards Plaintiffs’ Counsel \$11,558,322.99 in fees and \$661,043.70 as reimbursement for reasonable and necessary expenses;

- (6) awards certain funeral home members of the Provider and Trustee Class \$269,022.79 as reimbursement for reasonable and necessary litigation expenses; and
- (7) awards each of the named Consumer Plaintiffs an incentive award of \$5,000.

Dated: June 7, 2012

Respectfully submitted,

By: /s/ Edward A. Wallace

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***Counsel for Pettett Funeral Home, Ltd.***

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a copy of the foregoing *Class Plaintiffs' Motion for Final Approval of the Class Action Settlement, for an Award of Attorneys' Fees, and for Reimbursement of Litigation Expenses* to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system. Those attorneys not registered with the Court's electronic filing system will be served via First Class U.S. Mail, with proper postage prepaid, this 7<sup>th</sup> day of June, 2012.

/s/ Edward A. Wallace  
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Edward A. Wallace